

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CECIL ALAN MOON,

Petitioner,

v.

JAN TROMBLEY,

Respondent.

CIVIL NO. 2:07-CV-13754

HONORABLE MARIANNE O. BATTANI

UNITED STATES DISTRICT COURT

OPINION AND ORDER DENYING THE
MOTION FOR A CERTIFICATE OF APPEALABILITY

On June 9, 2010, this Court issued an opinion and order denying petitioner's application for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. This Court also denied petitioner a certificate of appealability but granted him leave to appeal *in forma pauperis*. See *Moon v. Trombley*, No. 2010 WL 2376168 (E.D. Mich. June 9, 2010). Petitioner has now filed a motion for a certificate of appealability, which the Court construes as a motion for reconsideration of its prior opinion and order. For the reasons stated below, the motion for a certificate of appealability is **DENIED**.

Because this Court previously denied petitioner a certificate of appealability when it denied the petition for writ of habeas corpus, the Court will construe petitioner's motion for a certificate of appealability as a motion for reconsideration of the Court's prior order to deny a certificate of appealability in this case. See

e.g. *Jackson v. Crosby*, 437 F. 3d 1290, 1294, n. 5 (11th Cir. 2006).

U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (h) allows a party to file a motion for reconsideration. However, a motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. See *Michigan Regional Council of Carpenters v. Holcroft L.L.C.* 195 F. Supp. 2d 908, 911 (E.D. Mich. 2002)(citing to U.S. Dist.Ct. Rules, E.D. Mich. 7.1 (g)(3)). A motion for reconsideration should be granted if the movant demonstrates a palpable defect by which the court and the parties have been misled and that a different disposition of the case must result from a correction thereof. *Id.*

Other than conclusory or unsupported allegations, petitioner has failed to advance any arguments in his request for a certificate of appealability which shows that this Court erred in denying the petition for writ of habeas corpus and in declining to issue a certificate of appealability. A habeas petitioner's conclusory assertion that jurists of reason would find his or her claims to be debatable is insufficient to warrant the issuance of a certificate of appealability. See *Babgy v. Saffle*, 53 Fed. Appx. 25, 28 (10th Cir. 2002). Petitioner's request for reconsideration will therefore be denied, because petitioner is merely presenting issues which were already ruled upon by this Court, either expressly or by reasonable implication, when the Court denied the petition for writ of habeas corpus and denied petitioner a certificate of appealability. See *Hence v.*

Smith, 49 F. Supp. 2d 547, 553 (E.D. Mich. 1999).

ORDER

IT IS ORDERED that the Motion for A Certificate of Appealability [Court Dkt Entry #19] is **DENIED**.

s/Marianne O. Battani

HON. MARIANNE O. BATTANI

UNITED STATES DISTRICT COURT

Dated: September 17, 2010

CERTIFICATE OF SERVICE

I hereby certify that on the above date a copy of this Order was served upon the Petitioner via ordinary U.S. Mail and the Respondent electronically.

s/Bernadette M. Thebolt

Case Manager